

Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C.

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In the Matter of )  
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 ) Docket No.  
1984 JUKEBOX ROYALTY )  
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DISTRIBUTION PROCEEDINGS )  
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MOTION FOR IMMEDIATE  
PARTIAL DISTRIBUTION

The American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc. hereby move for immediate partial distribution of 95% of the 1984 jukebox royalty fund, pursuant to 17 U.S.C. § 116(c)(4) (C), as follows:

1. We are the three statutorily-identified "performing rights societies," 17 U.S.C. § 116(e)(3). We have reached voluntary agreement concerning the distribution of 1984 jukebox fees pursuant to 17 U.S.C. § 116(c)(2). We have claimed 100% of the 1984 fund pursuant to the Tribunal's regulations, 37 C.F.R. § 305.4(a). See our Justification of Claim filed in these proceedings on November 1, 1985.

2. The only other entities which filed claims to the 1984 fund are Italian Book Co. and Asociacion de

Compositores y Editores de Musica Latino Americana ("ACEMLA"). We have reached a voluntary agreement with Italian Book Co. It has informed us and the Tribunal that it is withdrawing its claim to 1984 jukebox royalties, and that it will file a formal withdrawal from these proceedings shortly. ACEMLA has submitted an untimely-filed justification claiming 10% of the 1984 fund.<sup>1</sup>

3. It might be thought, therefore, that 10% of the 1984 fund -- the overlap of our claim and ACEMLA's -- is in controversy for purposes of partial distribution. However, the Tribunal has, correctly, never regarded the maximum amount claimed by any claimant as the determinant of the amount in controversy for partial distribution purposes. If it were to do so, any claimant could, with a wildly inflated claim, frustrate the Congressional purpose behind 17 U.S.C. § 116(c)(4)(C), of allowing partial distributions during the

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<sup>1</sup> ACEMLA submitted a petition for leave to file its Justification of Claim out-of-time on November 6, 1985, five days after the November 1 deadline. ACEMLA also has requested an additional 15 days to file supporting documentation for its Justification of Claim. To avoid any delay in a partial distribution of the 1984 jukebox fund, we are submitting this motion as if ACEMLA had timely filed its Justification of Claim. We believe ACEMLA's untimely-filed Justification of Claim should not be accepted by the Tribunal. Should the Tribunal agree with us, it may then declare these proceedings terminated, as there is no controversy among ASCAP, BMI and SESAC, the only claimants who have complied with the Tribunal's regulations. And, in such case, the Tribunal may distribute the entire 1984 jukebox fund, rather than the 95% we seek in this motion.

pendency of proceedings. Thus, the Tribunal has said, "the maximum claims advanced by claimants [do] not determine the amount in controversy for partial distribution purposes." 48 Fed. Reg. 54,679, 54,680 (December 6, 1983).

4. We suggest that a proper partial distribution to ASCAP, BMI and SESAC, which would take account of ACEMLA's claim under even the most sanguine view, would be 95% of the total fund. We suggest that figure, in part, because the Tribunal made 95% partial distributions in the 1982 and 1983 Jukebox Royalty Distribution Proceedings.<sup>2</sup> Those partial distributions were based in part on ACEMLA's Justifications of Claim in those proceedings, which were virtually identical in content to their untimely-filed claim here. 48 Fed. Reg. 55,497 (December 13, 1985); 49 Fed. Reg. 41,269 (October 22, 1984); 49 Fed. Reg. 46,458 (November 26, 1984); 49 Fed. Reg. 48,956 (December 17, 1984). The 1982 partial distribution, of course, was upheld by the Court. ACEMLA v. CRT, 763 F.2d 101 (2d Cir. 1985); see also, NAB v. CRT, \_\_\_\_ F.2d \_\_\_\_, No. 84-1230 (D.C. Cir. 1985).

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<sup>2</sup> We add that, as in the past, only we should receive the partial distribution because only we have received distributions in prior proceedings. See, 49 Fed. Reg. 46,458, 46,459 (November 26, 1984): "The Tribunal is restricting partial distribution to those claimants who have received royalties in previous jukebox royalty distributions."

5. In addition, the record of the recently-concluded consolidated 1982 and 1983 Jukebox Royalty Distribution Proceedings, Docket Nos. 83-2 and 84-2-83JD, establishes that even a 5% figure for the amount in controversy between us and ACEMLA is, to put it mildly, an overestimation.

6. The prompt distribution of 95% of the 1984 fund, as the amount not in controversy for partial distribution purposes, will effectuate the sound public policy expressed in the Copyright Act, that compulsory license fees should be distributed to creators and copyright owners as expeditiously as possible.<sup>3</sup>

7. For reasons of internal distribution procedures and budgetary considerations, we would like to receive the portion of the 1984 fund not in controversy as soon as possible, and certainly no later than December 31, 1985.

8. We have learned from the Copyright Office Licensing Division that the 1984 jukebox royalties have been invested in United States Treasury securities which mature on December 12, 1985, in the amount of \$5,835,000.

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<sup>3</sup> The difference between a 90% and 95% partial distribution represents a significant amount. The 1984 jukebox fund is approximately \$5.835 million. Thus, the difference of 5% between a 90% and 95% partial distribution amounts to almost \$300 thousand. That sum should not be withheld from creators and copyright owners until the conclusion of this proceeding because ACEMLA has filed a piece of paper with a 10% number in it.

9. We therefore respectfully request that the Tribunal make the partial distribution we have asked for on that date. If a distribution is not made on that date, the Copyright Office will likely reinvest the funds in securities whose maturity date will undoubtedly be after the first of the year. In the past, the Copyright Office has assured us that there would be no problem in selling those securities before their maturity date, so as to make available for distribution the portion of the 1984 fund not in controversy at any date directed by the Tribunal. If such a sale would be necessary (and we hope that the partial distribution will occur on December 12, 1985 so as to render the issue moot), we would affirmatively support such a sale before the securities' maturity date.

10. For these reasons, we respectfully move that: (a) the Tribunal order an immediate partial distribution of 95% of the 1984 jukebox fund to ASCAP, BMI and SESAC jointly; and (b) the Tribunal direct the Copyright Office to implement such a partial distribution order by taking all steps necessary (including, if necessary, sale of United States Treasury securities in advance of their maturity date) to make such monies available for distribution on December 12, 1985, and in no event later than December 31, 1985.

Respectfully submitted,

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Dated: November 7, 1985

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
"Motion for Immediate Partial Distribution" of ASCAP, BMI  
and SESAC was served, via first-class mail, postage prepaid,  
this 8<sup>th</sup> day of November, 1985, on the following:

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